

**State of Colorado
Department of State**

HAVA DIVISION



SECRETARY OF STATE
HAVA COMPLAINT: SOS-HAVA-30-05-0001
April 27, 2005

IN RE:

**REPORT OF INVESTIGATION OF ACCESSIBILITY TO POLLING PLACE
PRECINCT #7212230013—NOVEMBER 2, 2004 GENERAL ELECTION**

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IN RE:	}	
	}	SECRETARY OF STATE
REPORT OF INVESTIGATION	}	STATE OF COLORADO
ACCESSIBILITY TO POLLING PLACE	}	
PRECINCT #7212230013	}	SOS-HAVA-30-05-0001
November 2, 2004 GENERAL ELECTION	}	

I. Procedural Background

On January 27, 2005, the Office of the Secretary of State (the “Office”) received a written, sworn, signed, and notarized Complaint (the “Complaint”) dated January 21, 2005, filed by Jennie J. Esquibel (“Esquibel”) alleging specific violations of the Colorado Uniform Election Code and Title III of the Help America Vote Act of 2002 (42 USC 15512, *et seq.* (2002)) by the Jefferson County Clerk and Recorder Faye E. Griffin (“Griffin”), with regard to the county’s alleged failure to post proper signage, failure to provide adequate accommodations for disabled electors waiting to vote, and failure to allow a person with physical disabilities to vote independently and privately, violating section 301(a)(3)(A) and (B) of Public Law 107-252 at a certain Polling Place (the “Polling Place”). [Exhibit “1.”](#) On February 23, 2005, this Office acknowledged receipt of the Complaint by letter to the Jefferson County Clerk and Recorder and assigned a unique tracking number (SOS-HAVA-30-05-0001) to the Complaint evidencing the file date.

This Office acknowledged in the letter that the Esquibel Complaint met the requirements of § 1-1.5-105, 1 C.R.S. (2003), and the Help America Vote Act of 2002 (“HAVA”), 42 U.S.C. 15512, *et seq.* (2002), that the Complaint was timely filed, and that this Office accepted jurisdiction. On February 23, 2005, this Office, by written correspondence, provided notice of the Esquibel Complaint to Griffin and advised Griffin of her right to a hearing; however, no hearing was requested.

On March 24, 2005, Susan Miller (“Miller”), Jefferson County Director of Elections, on behalf of Griffin filed a written response addressing the claims alleged in the Esquibel Complaint. [Exhibit “2.”](#) Attached to her response, Miller submitted [Exhibit “3”](#), Mr. Ben Nordell’s Certificate of Appointment & Oath of Watcher; [Exhibit “4”](#), a map of precinct 7212230013; and [Exhibit “5”](#), the Stone House brochure as distributed by the City of Lakewood. Miller supplemented her response on April 6, 2005 by submitting [Exhibit “6”](#), a sketch provide by election judge Tim Maloney detailing the arrangement of tables, chairs and equipment in the Stone House during the November 2, 2004 General Election.

As part of its investigation, on March 7, 2005, this Office inspected the Polling Place at precinct number 7212230013, Stone House, 2900 South Estes Street, Lakewood, Colorado 80227-4531. In addition, this Office requested and received from Griffin written diagrams of that portion of the Stone House used as the Polling Place.

In issuing this Final Determination, the written submissions of the parties have been received and considered, the credibility has been weighed, the Complaint and the responses thereto and related documents have been considered, this Office applies a preponderance of the

evidence standard. *See Karnes v. SCI Colorado Funeral Services, Inc.*, 162 F.3d 1077, 1081 (10th Cir. 1998)(holding that the preponderance of evidence standard generally applies in Title VII cases where the federal or state statute does not explicitly set forth a standard, insofar as it constitutes a conventional rule of civil litigation)(citing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 253 (1989); *Community Hospital v. Fail*, 969 P.2d 667, 681 (Colo. 1998)); *see also* § 13-25-127(1), 5 C.R.S. (2003)(stating that notwithstanding any provision of law to the contrary, the degree of proof required in any civil action shall be by a preponderance of the evidence).

II. Jurisdiction

Jurisdiction of the Office of Secretary of State is vested pursuant to § 1-1-107(2)(b), 1 Colorado Revised Statutes (“C.R.S.”)(2003), which specifically authorizes the Secretary of State to review the practices and procedures of the County Clerk and Recorder of Jefferson County, its employees and other election officials in the conduct of an election. These powers have been vested in the Secretary of State pursuant to Section 11 of Article VII of the State of Colorado Constitution to secure the purity of elections and to guard against the abuses of the elective franchise. *See* § 1-1-107(5), 1 C.R.S. (2003). Further, this Office is empowered to exercise any other powers or perform any other duties that are consistent with Article 1.5 of Title 1, C.R.S. (2003) and that are reasonably necessary for the proper administration, implementation, and enforcement of the Help America Vote Act (“HAVA”) 42 U.S.C. 15512, et seq., (2002) and that will improve the conduct of elections in the state in conformity with HAVA. *See* § 1-1.5-104(1)(f), 1 C.R.S. (2003).

This Office determines that pursuant to § 1-1.5-105(2)(b), 1 C.R.S. (2003) and 42 U.S.C. 15512(a)(2)(B), Esquibel has standing to bring a Complaint.

III. Issues Raised by the Complainant

A. The complainant, Esquibel, alleges the following:

1. The county failed to post proper signage at the Polling Place.
2. The Polling Place did not provide adequate seating accommodations for disabled electors waiting to vote.
3. The Polling Place did not allow a person with physical disabilities to vote independently and privately.

IV. Findings of Fact

1. Posting of Signage.

The Polling Place is located on the Bear Creek Greenbelt in the City of Lakewood. An elector can travel either northbound, north of Hampden Avenue or southbound, south of West Yale Avenue on South Estes Street, west of Wadsworth Boulevard to reach the Polling Place. [Exhibit “7a”](#) demonstrates the visible signage posted along the east side of South Estes Street. The signage is located at the entrance to the greenbelt and simply names the greenbelt and

identifies it as a City of Lakewood property. To view any signage for the Stone House, an individual would be required to enter the parking area where a large stone marker identifies the Polling Place. [Exhibit “7b.”](#) As Miller concedes in her response, during the summer months the signage is barely visible due to overgrown, lush vegetation as illustrated in [Exhibit “5.”](#) However, we respectfully disagree with her claim that the signage is easily visible during the winter months when the deciduous vegetation dies off. We concur that the lush vegetation is indeed absent during the winter months, however, as noted during our site visit, the dead debris remains present, and therefore obstructs the view of the permanent stone marker identifying the Polling Place. In addition, a split rail fence runs parallel to the stone marker, obscuring the view from the road way. [Exhibit “7c.”](#)

2. Accommodations for Disabled Voters Waiting to Vote.

Esquibel alleges in her Complaint that a long line outside the Polling Place forced her to enter the building while her daughter and the daughter’s fiancé retained her place in line. Esquibel also alleged that once inside the Polling Place, she discovered that only four chairs were available for the use of the general public, of which she alleged one was being utilized by another elector and the remaining two or three were being used to house the belongings of Mr. Ben Nordell, a Republican Party poll watcher. [Exhibit “3.”](#) Esquibel alleged that when she asked if she could use one of the chairs, Mr. Nordell was rude and reluctant to relinquish the use of one. Mr. Nordell eventually cleared his belongings from one of the chairs and with some difficulty, Esquibel obtained Mr. Nordell’s name for her records.¹

In Miller’s response, she remarks that though their accounts differ, each election judge she spoke with noted that there were chairs available, but no one could agree on a singular count. The Polling Place was equipped with a total of 35 chairs and all present agree, “The chairs were used for the elderly or disabled.” However, Mr. Maloney notes in his diagram of the Polling Place that the chairs for waiting voters were not put out until approximately 12:00 PM.

Miller reiterates the fact that judges described the Polling Place as “cramped” or “full” most of the day. Miller noted precinct number 7212230013 has 1,263 active, registered voters, of which, 501 voted at the Polling Place during the 2004 General Election. Though no exact measurements were available, this Office and the office of the county clerk approximate the total square footage of the four rooms on the main floor of the Stone House at approximately 800 sq. ft. This office feels it necessary to point out that the Stone House advertises a maximum capacity of 35 individuals ([Exhibit “5”](#)); also note that four elections judges were on the premises the entire day, as well as the four poll watchers who had been approved to monitor this precinct. In a twelve-hour day, 7 AM to 7 PM, 501 electors passed through the Stone House. Assuming a best-case scenario, if electors maintained a steady stream throughout the day, it is safe to assume that at any given time on Election Day, approximately forty-two electors were present at the Polling Place in addition to the four election judges and four poll watchers, consistently exceeding the facility’s maximum capacity.

3. Voting Equipment.

¹ Please note that Esquibel mistakenly notes Ben Nordell’s name as Ben Verdill in her Complaint.

Finally, Esquibel asserts that after signing in and standing for about five minutes she began having trouble breathing. An election official noted her difficulties and asked if she'd like to sit down to vote. Esquibel took a seat at a table adjacent to the line and waited for the official. She alleged that the official brought a voting machine to the table where she was sitting and that her daughter was forced to prop up the machine so she could view the screen. Esquibel goes on to allege that the lighting in the room made it difficult to read the display. Because Esquibel could not read the ballot, she was required to seek assistance pursuant to Section 1-7-111, CRS (2004)², though it appears no formal request was made or is of record. Pursuant to Esquibel's request, her daughter read the ballot to her and assisted her in casting her vote. Esquibel alleges that people standing in line could see her screen and had the ability to listen to her relay her decisions to her daughter.

Esquibel asserts that her inability to utilize the equipment caused her to feel humiliated and degraded, thus violating Section 301(a)(3)(A) and (B) of the federal Help America Vote Act of 2002. Section 301(a)(3)(A) and (B) provide:

- (3) Accessibility for individuals with disabilities. The voting system shall:
 - (A) be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;
 - (B) satisfy the requirement of subparagraph (A) through the use of at least one direct record electronic voting system or other voting system equipped for individuals with disabilities at each Polling Place.

However, the effective date of this provision does not become effective until January 1, 2006 and is to be applied prospectively.³ Inasmuch as Section 301(a)(3)(A) and (B) do not affect the election in question, CRS section 1-7-111 (2004) does authorize a workable, legal alternative until the January 1, 2006 deadline.

In Miller's response, she contends that the voting equipment present at the Polling Place was accessible⁴ and equipped with an audio feature for those with visual difficulties. Two of the election judges present believe Esquibel was offered an audio ballot, but can't specifically recall whether or not she chose to utilize this option. Regardless of whether Esquibel was provided

² CRS Section 1-7-111 (2004) authorizes any registered elector who declares to the election judges that, by reason of blindness or inability to read or write, he or she is unable to prepare the ballot or operate the voting device or electronic voting device without assistance, the elector is entitled, upon making the request, to receive the assistance of any one of the election judges or, at the elector's option, any eligible elector selected by the disabled eligible elector.

³ Each State and jurisdiction is required to comply with the requirements of this section (Section 301) on and after January 1, 2006. Help America Vote Act of 2002, Public Law 107-252, Section 301(d). The state of Colorado has chosen to exercise the option set forth in Section 303(a)(3)(B) by requiring one direct record electronic (DRE) specially equipped voting device in each Polling Place and has budgeted money for purchase of such devices prior to January 1, 2006.

⁴ For purposes of this report, it should be noted that the voting systems deployed by Jefferson County were acquired prior to any legal or regulatory definition or guidelines of what an "accessible" voting system is. (In fact, to date, there are no federal guidelines that address what constitutes an accessible voting system.) This Office is neither asked for, nor does it render, a legal definition or finding of accessibility with regard to the voting system in question.

with an audio ballot or assistance pursuant to CRS Section 1-7-111 (2004) is secondary to Esquibel's right to privately cast a secret ballot screened from observation by others. The evidence clearly shows that voters with disabilities were queued in an area designated as a "table for handicapped voters to use while voting." (See [Exhibit "6."](#)) This table area, while in the same area as other voting machines, did not by its very nature provide privacy. There was no voting booth situated so as to permit a disabled voter to prepare his or her ballot screened from observation. See CRS Section 1-5-501 (2004). It is true that Jefferson County met the statutory minimum number of voting booths for the voting system and the precinct in question. What is unclear from the evidence is why a separate area designated for disabled voters exists at all. Were the voting booths used for able-bodied voters unsuitable or improper for a disabled voter? Was Jefferson County merely trying to accommodate disabled voters in an expedited fashion? Were able-bodied voters required to cast their ballots in a similar fashion?

HAVA is civil rights legislation for all voters. Importantly for disabled voters, however, is the right to vote in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters. It is true that much of this requirement is to be accomplished by installation and use of a direct recording electronic (DRE) voting system similar to that already used by Jefferson County by January 1, 2006. However, the Complaint does not raise issue with the use of DREs; it takes issue with the environment in which the DRE was used. Issues, such as lack of proper lighting and lack of privacy in order to properly read (or be read to) and mark a ballot in private, are central to this Complaint.

This Office holds that Jefferson County (in instituting a table for a removable DRE for the disabled voters to cast their ballots) should have used a voting booth, privacy booth or other aide to promote and ensure privacy for disabled voters regardless of whether a disability DRE was used or assistance was used pursuant to section 1-7-111 in order for a disabled voter to cast a ballot privately.

V. Legal Authority

The right to vote and have that vote counted is deeply seated in the history of the United States. The Supreme Court of the United States has recognized the right to vote as a fundamental right in a democracy ordained by self-determination. Voting is one of the most fundamental and cherished liberties in our democratic system of government. *Burson v. Freeman*, 504 U.S. 191, 214 (1992)(Justice Kennedy, concurring). The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. *Bush v. Gore*, 531 U.S. 98, 104-105 (2000). Undeniably the Constitution of the United States protects the rights of all qualified citizens to vote, in state as well as federal elections. A consistent line of decisions by this Court [the U.S. Supreme Court] in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, and to have their vote counted. *Reynolds v. Sims*, *supra*, at 544-555. It is unquestionable that the right to have one's vote

counted is as open to protection by Congress as the right to put a ballot in the box. *United States v. Mosley*, 238 U.S. 383, 386 (1915).

Section 1-1-107(2)(b), 1 C.R.S. (2003) authorizes the Secretary of State:

(2)(b) To inspect, with or without the filing of a Complaint by any person, and review the practices and procedures of county clerk and recorders, elections commissions, their employees, and other election officials in the conduct of primary, general, and congressional vacancy elections and the registration of electors in this state.

Section 1-1.5-105, 1 C.R.S. (2003) provides in relevant part:

1-1.5-105. Complaint procedure

(1) Subject to the requirements of this section, in accordance with section 402 of HAVA, the secretary may establish by rule a uniform administrative Complaint procedure to remedy grievances brought under title III of HAVA.

(2) Any rules promulgated pursuant to subsection (1) of this section shall provide for, but need not be limited to, the following:

(a) A uniform and nondiscriminatory Complaint procedure;

(b) Authorization for any person who has either been personally aggrieved by or has personally witnessed a violation of Title III of HAVA that has occurred, is occurring, or that is about to occur, as applicable, to file a Complaint;

(c) A description by the complainant in his or her Complaint of the alleged violation with particularity and a reference to the section of HAVA alleged to have been violated;

(d) A requirement that the Complaint be filed no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the Complaint, whichever is later;

(e) A requirement that each Complaint be in writing and notarized, signed, and sworn by the person filing the Complaint;

(f) Authorization for the secretary to consolidate two or more Complaints;

(g) At the request of the complainant, a hearing on the record;

(h) Authorization for the secretary to provide an appropriate remedy if the secretary determines that any provision of Title III of HAVA has been violated or to dismiss the Complaint and publish the results of his or her review if the

secretary determines that no provision of Title III of HAVA has been violated;

(i) A final determination on the Complaint by the secretary prior to the expiration of the ninety-day period that begins on the date the Complaint is filed, unless the complainant consents to an extension of time for making such determination;

(j) Resolution of the Complaint within sixty days under an alternative dispute resolution procedure that the secretary shall establish in accordance with the requirements of this section if the secretary fails to satisfy the applicable deadline specified in paragraph (i) of this subsection (2), and the availability of the record and any other materials from any proceedings conducted under the Complaint procedures established for use under such alternative dispute resolution procedures;

(k) Authorization for the secretary to conduct a preliminary review of any Complaint submitted to him or her and to dismiss any Complaint that he or she finds is not supported by credible evidence; and

(l) Recovery by the secretary of the costs of the proceeding against any complainant who files a Complaint that, in connection with the final determination by the secretary pursuant to paragraph (i) of this subsection (2), is found, on the basis of clear and convincing evidence, to be frivolous, groundless, or vexatious.

(3) Notwithstanding any other provision of law:

(a) No Complaint shall be brought pursuant to the procedure created by this section unless the Complaint alleges a violation of Title III of HAVA;

(b) Proceedings for the resolution of a Complaint brought pursuant to this section shall not be considered an adjudication under Article 4 of Title 24, C.R.S.; and

(c) The procedures created by this section shall constitute the exclusive administrative remedy for a violation of Title III of HAVA.

(4) Any person aggrieved by a final determination by the secretary acting pursuant to paragraph (i) of subsection (2) of this section may appeal the secretary's determination to the district court in and for the City and County of Denver within thirty days of the date of the determination.

VI. Conclusion

Summary of Final Determination

This Complaint raises the issue of signage at the Polling Place, accessibility of the Polling Places, and accessibility requirements for voting systems as the state of Colorado

transitions from a decentralized, county-run election system to a centralized, uniform state-reviewed election system mandated by the federal Help America Vote Act. The law requires that every voter have the opportunity to cast an independent, secret ballot. To accomplish this, elections must be held in locations that are physically accessible pursuant to CRS section 1-5-703 (2004).

Signage at the Polling Place.

This Office finds that the permanent signage posted at the Polling Place does not sufficiently alert electors to the presence of the Polling Place. The permanent stone marker identifying the Stone House is a considerable distance from the main road, is shrouded by foliage and its view is obstructed by a split rail fence running parallel to the marker. This Office recommends that in addition to the signs posted on the building and at the parking area, roadside signage be posted on the day of the election to notify electors of the Polling Place's presence.

Polling Place Accessibility.

Subject to the aforementioned findings, the evidence reflects that the dimensions and capacity of the Polling Place in relation to the number of active registered electors who reside and vote in the precinct exceeds the capability to accommodate electors. The purpose of an accessible Polling Place is to permit all eligible electors to cast a secret ballot. This Office encourages Jefferson County to review the location, capacity, flow, access, and privacy issues to determine whether it is in the county's best interest to continue to use the Stone House as the Polling Place for precinct number 7212230013.

Voting Systems Accessibility.

This Office finds that the accessibility requirements of section 301(a)(3)(A) and (B), HAVA, for accessible voting systems do not become effective until January 1, 2006. While accessible voting systems are not required until January 1, 2006, it does not obviate the requirement that all voters are entitled to cast a secret ballot. The fact that Jefferson County has direct recording electronic voting equipment with some accoutrements that may meet the federal guidelines of accessibility (if and when such guidelines are issued by the federal government), the mere presence of a such equipment does not diminish the responsibility to provide a polling booth, privacy booth, or other private accessible area where a disabled voter may privately and independently cast his or her vote.

RESPECTFULLY SUBMITTED this 27th Day of April, 2005.

Drew T. Durham
Director of Colorado HAVA
Office of the Secretary of State

APPROVED:

Date: _____

Donetta Davidson
Colorado Secretary of State

Exhibit 1 Esquibel Complaint

<p>COMPLAINT For Alleged Violation of Title III of the Help America Vote Act of 2002 (42 U.S.C. §15512)</p> <p>Colorado Secretary of State, HAVA Division 1560 Broadway, Suite 200 Denver, Colorado 80202 Phone: 303.894.2200, ext. 6314 Fax: 303.869.4861</p>	<p>SOS-HAVA-30-05-0001</p> <div style="border: 1px solid black; padding: 10px; text-align: center;"><p>RECEIVED</p><p>JAN 27 2005</p><p>HAVA Division Secretary of State</p></div>
<p>Pursuant to section 1-1.5-105, Colorado Revised Statutes, the Secretary of State has sole jurisdiction to adjudicate alleged violations of Title III of the Help America Vote Act of 2002 (HAVA). Any person who believes that a violation of Title III of HAVA has occurred, is occurring, or is about to occur may file a complaint. In order to initiate the complaint process, a sworn, written, signed and notarized complaint must be filed with the Secretary of State no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the complaint, whichever is later. The complaint must allege the violation with particularity, contain a reference to the section of HAVA alleged to have been violated, and the person or entity responsible for the violation.</p>	
PERSON BRINGING COMPLAINT	
<p>Name <u>Jennie J. Esquibel</u> Home Phone <u>4780 720-278</u> Work Phone <u>N/A</u> Address <u>4137 W. Eastman Place 8-206</u> County <u>Jefferson</u> City <u>Lakewood</u> State <u>CO</u> Zip Code <u>80227</u></p>	
PERSON OR ENTITY AGAINST WHOM COMPLAINT IS BROUGHT (limit one person/entity per form)	
<p><u>Election Judge / Clerk + Recorder</u> Name <u>Ben Verdill</u> Home Phone _____ Work Phone _____ Address <u>Stone House</u> County <u>Jefferson</u> City _____ State _____ Zip Code _____</p>	
VIOLATION:	
<p>If you believe that a violation of Title III of the Help America Vote Act of 2002 has occurred, is occurring or is about to occur, please state the specific acts committed by the person or entity named in this complaint along with a reference to section of HAVA alleged to have been violated: (If you need more space please attach a separate sheet)</p> <p><u>My polling place was the Stone House in Lakewood (Vale & Estes) It took 1/2 hour for us to find it. We didn't see any signs to tell us that this was our polling place.</u> <u>There was a long line going outside. It was very cold outside. My daughter and her fiancé stood in line outside. I walked inside and sat down to wait. I walk with a cane because</u></p>	
<p>HAVA/Complaint/appvd/SOS/01/04 1</p>	

STATEMENT OF FACTS:

State in your own words the detailed facts and circumstances that form the basis of your complaint, including any relevant person(s). In your narrative explanation, please include relevant dates and times and the names and addresses of other persons whom you believe have knowledge of the facts. Also, give any reasons that you feel the alleged violation was committed by the person and/or entity against whom this complaint is brought.

of arthritis and back problems. I also require oxygen because of asthma & emphysema. I can't stay outside in cold weather. When I went inside I saw 4 chairs. One lady sat on one, the other 2-3 chairs were taken up by Ben Verdill and his papers. He saw me standing there but didn't do anything such as ask me if I wanted to sit down. Another lady asked him if those were his papers and he said yes. She asked him if he would please gather his papers so I could please sit down. In doing so, he took his time about it. Then I asked him what his name was. He told me, but I couldn't hear well because I have Meniere's Disease. Then he told me his name pretty fast, but I couldn't catch it. So I asked him "Sir, could you please tell me your name again?" He said my name is B-E-N and I told him I knew how to spell, just tell me again because I couldn't hear him. He was rude. Then I sat & waited for my turn. I showed my ID and got back into line with my daughter & her fiancée. We stood in line for about 5 minutes & then went into the room with the voting machines. I was breathing hard because of my disabilities. Another, younger man, on that side, asked if I'd like to sit down to vote. I said yes. Right next to me was 1 or 2 long tables with 3-4 chairs. I sat there because he told me he would bring me a voting machine. I didn't know how he would do that. I thought that we might pull my chair into the voting booth. But instead he pulled out the voting machine & put it on the table in front of me. My daughter had to hold up the screen because it would have fallen back. I had trouble reading the screen because of how the light hit it and I need larger print. My daughter had to

Check here if additional pages are attached ☒

read the ballot to me in a loud voice because I have trouble with my hearing because of Meniere's.

STATEMENT OF FACTS:

State in your own words the detailed facts and circumstances that form the basis of your complaint, including any relevant person(s). In your narrative explanation, please include relevant dates and times and the names and addresses of other persons whom you believe have knowledge of the facts. Also, give any reasons that you feel the alleged violation was committed by the person and/or entity against whom this complaint is brought.

I requested a complaint form because of Ben's attitude. One of the ladies told me they only had one & it had to stay there, she sent someone to get some. I was told this would take 10 minutes, but I left after waiting 20 minutes. My daughter was reading the ballot to me and we noticed that people in line to vote were standing right behind me, looking at my screen & how I was voting. They could also hear my daughter & me talking about my vote. People were laughing when they heard my choice for president. This was humiliating & degrading and I felt like I was in a country without freedom. This felt ugly to me and like being in a communist country.

I called my political party office and they referred me to The Legal Center.

I hope that in the future, our government will find the proper way to help people with disabilities vote in a way where you are proud & feel good that you were able to go vote.

Because I believe that in the United States my freedom is of the most value to me and always will be.

Check here if additional pages are attached ☐

HAVA/Complaint/appvd/SOS/01/04

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STATE OF COLORADO
COUNTY OF Jefferson

I, the undersigned, under penalty of perjury, do swear or affirm that the information contained in this complaint is true and correct to the best of my knowledge.

Juanita J. Espinoza
Signature of Complainant

Sworn to and subscribed before me this 21 day of January, 20 05.

Mary Stulsen
Signature of Officer Authorized to Administer Oaths or Notary Public

witnessed by: Michelle Lewis
Rights Advocate
The Legal Center

(Print, Type, or Stamp Commissioned Name of Notary Public) 7/28/07

Personally known _____ or Produced Identification _____
Type of Identification Produced CO DR. LIC # 92-067-3590 exp. 02-02-2014

NOTICE: This Complaint is not confidential and, once filed with the Department of State, will be treated as a public record.

HAVA/Complaint/appvd/SOS/01/04

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Exhibit 2 Griffin Response



March 24, 2005

TO: Billi Jo Lupton
 Secretary of State's Office
 Help America Vote Act

CC: Faye Griffin, County Clerk
 Lori Webb, Chief Deputy

FROM: Susan Miller *slm*
 Director of Elections

RE: HAVA Complaint from 2004 General Election

RECEIVED

MAR 31 2005

**ELECTIONS / LICENSING
SECRETARY OF STATE**

Faye Griffin
CLERK AND RECORDER

Lori O'Neall
CHIEF DEPUTY

Susan Miller
DIRECTOR OF ELECTIONS

Kathryn DeBoer
DIRECTOR OF MOTOR VEHICLE

Joan K. Card
DIRECTOR OF RECORDING

Gary VanDeStouwe
TECHNICAL DIRECTOR

We have completed thorough research concerning the HAVA Complaint from the 2004 General concerning the events at the Stone House polling place. The following is what we discovered:

We had four election judges serving at the polling place and have been able to contact three of the four judges. Curtis Smith, Laura Ann Schwindt, and Timothy Maloney were available to speak to, but the phone number we had for Lillian Franz has been disconnected.

Curtis Smith said that he did not have any complaints from voters who had trouble finding the polling place and Ms Schwindt agreed. In fact she went on to explain that there were several polling place and/or directional signs inside and outside the polling place and even some by the Handicapped Parking and on the walkway. Timothy Maloney also said that they had the signs posted, but said that he received a "couple" of complaints from voters who had trouble finding the place. I am including a brochure we received about the Stone House for your edification and you can see from it that there is a large stone marker just off the street with the name of the building on it. Please note that there is some foliage coverage shown on the brochure but that picture was taken in the summer when the grass was green and the trees were full. Obviously in November this is not the case and the stone marker is totally visible from the front of the area on Garrison Street. It is important to note that in this precinct, 7212230013, we have 1263 active voters of which 501 found the polling place because they voted there on election day. Hearing that ONLY a "couple" of them complained is a good testament to the adequate marking of the polling site.

100 JEFFERSON COUNTY PARKWAY, GOLDEN, COLORADO 80419

We received differing views from the judges as to whether there were chairs available for the voters. Both of the men said that there were chairs available. Mr. Smith said that there were 10 to 12 available and Mr. Maloney said that there were a few chairs there. Ms. Schwindt stated that there were chairs available but they were in use most of the time by one voter or another. The brochure that we received from the City of Lakewood about the rental of the Stone House specifically states that there are "35 stacking chairs" there. (please see the enclosed brochure). All judges agreed that the chairs were used for the elderly or disabled.

You may note that the brochure from the City of Lakewood states that the Stone House is "not handicap accessible." This refers to the fact that the restrooms are downstairs and not to anything concerning the main floor voting activities. Voters can come in and go out of the building without problems – it is very manageable. There are also park restrooms close to the Disabled Parking. These are real restrooms and not a portable model so anyone who cannot manage stairs in the Stone House could use these.

The judges described the polling place as "cramped" or "full" most of the day. This may be the case due to the sheer volume of voters and the voting equipment, chairs, and tables required to complete the voting process. There was a line of voters that extended outside at times because the voter turnout was so heavy periodically that all of the voters could not stand inside. Ms. Esquibel states that she had to come inside to sit while her daughter held her place in line. This procedure appears to be a fair solution for all involved. She could not have been taken to the front of the line because that would not have been fair to others who were waiting so her place in line was marked by her daughter's presence. There was not enough room for her daughter and fiancé to come in and wait with her since the chairs were mainly for those who specifically needed them as well as that would have left her place in line empty.

The election official that the complaint refers to was not one of our judges, but rather was a poll watcher sent by the Republican Party. Ben Verdill is not one of our people and was trained by the party. The interesting thing about this is that the judges all say they did not see the poll watcher do or say anything wrong. Mr. Smith and Mr. Maloney said that the only incidents they observed concerning the poll watcher were when the poll watcher asked another voter to remove a political button that said, "Vote for Kerry." Ms. Schwindt said that she observed some discussion between a voter and the poll watcher, but in her mind, the voter blatantly attacked the poll watcher and not the other way around. She said that if anyone had a reason to complain it was the gentleman since she thought he did nothing wrong.

We are concerned about the complaint against the judges that says the voter was given a voting machine and could not see the screen and the other voters could hear her choices as she told her daughter what her choices were. We have a "Disabled Accessible Voting Machine" at each of our polling places. These machines are equipped with an audio ballot that can be heard through an attached headpiece. Using this device, the voter can hear the ballot and can make choices by using an up and down button as described in the

audio information. Ms. Schwindt said that she was not in the same room where Ms. Esquibel voted, but both of the men say that they believe she was offered an audio ballot. Mr. Smith says he can't remember for sure whether she refused or not. He does say, though, that 4 or 5 people were offered the ballot and so it was a matter of course for them to make that accommodation if the voter needed it. Mr. Smith says that he is sure she used the audio ballot and he was the one working the machines so his comment is very important. We're not sure why she would have been talking the ballot with her daughter, but it sounds like she was given the correct machinery to vote on.

Lastly, we would like to address the statement that there was not a HAVA complaint form easily available for the voter. We sent five complaint forms to each of the polling places. I personally did the judges' training and know that the judges were aware of what the document was and what they should do with it. Ms. Esquibel says that the judge said they only had one of the forms. She did not say that the judge didn't know what she was talking about or that the judge ignored her. Thus, the judge was knowledgeable about the process. What is suspect then is how many were at the polling place and if the judge said someone was going to get them (which would take 10 minutes), where were they and why did they need to be accessed from another place.

We discovered that the election judges gave out four of the complaint forms (we are not certain who these were given to) and only had one left when Ms. Esquibel asked for one. We had told the judges, at training, that they were supposed to let us know immediately when they were down to one or two forms so we could send a "trouble car" out to them with replacements. (Our "trouble cars" were cars driven by our employees who just drove around and around their given areas on election day answering trouble calls.) The judges should have called us immediately when they gave away the fourth form, but did not. They waited until someone asked for the last form and then made the call. Because of the volume of voters and the fact that the "trouble car" had two stops before the Stone House polling place, it took our driver 40 minutes to respond to the judges' call. It is important to note that we had fifteen "trouble cars" out on the road covering 323 precincts. While that may not seem like a sufficient number, it is normally very adequate since many of the polling places are very close to each other and can be accessed quite readily. Again, the high volume of voters changed the entire scenario for us.

We have asked the judges for a drawing that shows how the polling place was set up, as yet, have not received one. Mr. Smith explained that there were different stations. The first had someone who handed out the signature cards to the voters who filled them out at the station. The second station was where the voter gave the signature card to the election judge who checked the registration book to make certain the voter was eligible to vote and then put that voter's name in the poll book. The third and final station was where the voter was given a PEB (personal electronic ballot) if he or she was determined eligible to vote or a provisional ballot if the voter's eligibility was questioned. Ms. Schwindt commented that she didn't think they could have set the room up any differently because there wasn't much room to do anything different. I would like to refer back to my earlier comment that the room was full of a lot of voters, chairs, tables and voting equipment.

In all, we have done a thorough investigation about the day's events at this polling place. The judges have been very gracious and helpful. As a result of these queries, we believe we can improve on our election procedures. However, we also discovered that, as a whole, our judges acted in a responsible and professional manner. We are very sorry that Ms. Esquibel felt any discomfort or had any sort of bad experience voting at one of our polling place. She should not have had to feel that way and we regret it.

If you need anything further from us, please let me know. My phone number is 303-271-8114 and my e-mail address is smiller@jeffco.us. We will forward the drawing of the polling place to you when we receive it. Please rest assured that we want to clear up this as soon as possible.

Thank you.

Exhibit 3 Certificate of Appointment & Oath of Watcher

Approved SOS 4/2004

CERTIFICATE OF APPOINTMENT & OATH OF WATCHER

CRS 1-7-105 et seq.

Jefferson COUNTY, COLORADO
TO THE ELECTION JUDGES IN
Precinct 7212230013
or TO THE DESIGNATED ELECTION OFFICIAL

Date: 10/24/04

Who can be a watcher? An eligible elector, other than the candidate, who has been selected and certified by one of the persons listed below who is authorized to certify. If selected by a political party chairperson, a party candidate or an unaffiliated candidate, the watcher shall be affiliated with that political party or unaffiliated as shown on the registration books of the county clerk and recorder, pursuant to CRS 1-1-104(51).

Who cannot be a watcher? A candidate on the ballot, or a member of the candidate's immediate family by blood or marriage to the second degree, pursuant to CRS 1-7-108(2).

Directions to the Watcher: Surrender this completed certificate to the election judge or designated election official at the time you enter the polling place or early voting site or absentee processing/counting site or provisional processing/counting site or recount site. You will then be sworn in by the attending judges, election official or designated election official.

Check appropriate blanks:

Type of Election:

☐ Coordinated Election
1-7-107

☒ General Election or Cong.
Vacancy Election
1-7-106

☐ Primary Election
1-7-105

☐ Recall Election

☐ Recount
SOS Rule 8.10

Who is entitled to have a watcher:

☐ candidate
☐ proponent of ballot issue/question
☐ opponent of ballot issue/question

☐ unaffiliated or write-in candidate
☒ political party
☐ issue committee for issue on ballot

☐ political party
☐ candidate for nomination on ballot

☐ official subject to recall
☐ candidate on the recall ballot

☐ candidate involved in the recount
☐ proponent of issue/question involved in recount
☐ opponent of issue/question involved in recount
☐ political party involved in recount

Who shall certify appointment:

☐ Candidate
☐ Proponent of Ballot Issue/Question
☐ Opponent of Ballot Issue/Question
☐ Unaffiliated or Write-in Candidate
☐ Party chairperson
☐ President, chairperson or responsible official of committee

☐ Party chairperson
☐ Party candidate
☐ Elected official subject to recall
☐ Candidate
☐ Candidate involved in Recount
☐ Proponent of Recount Issue/Question
☐ Opponent of Recount Issue/Question
☐ Party chairperson

APPOINTMENT OF WATCHER

543052
Ben Nordell is hereby certified to act as a Watcher for the Election as specified above.

(Printed name of Certifying Official) RENEE A. NELSON (Title of Certifying Official) JEFFCO REP. VICE CHAIR

(Signature of Certifying Official) Renee A. Nelson Date Signed 10-28-04

Received by [Signature]
Clerk and Recorder or Deputy Clerk

OATH OF WATCHER

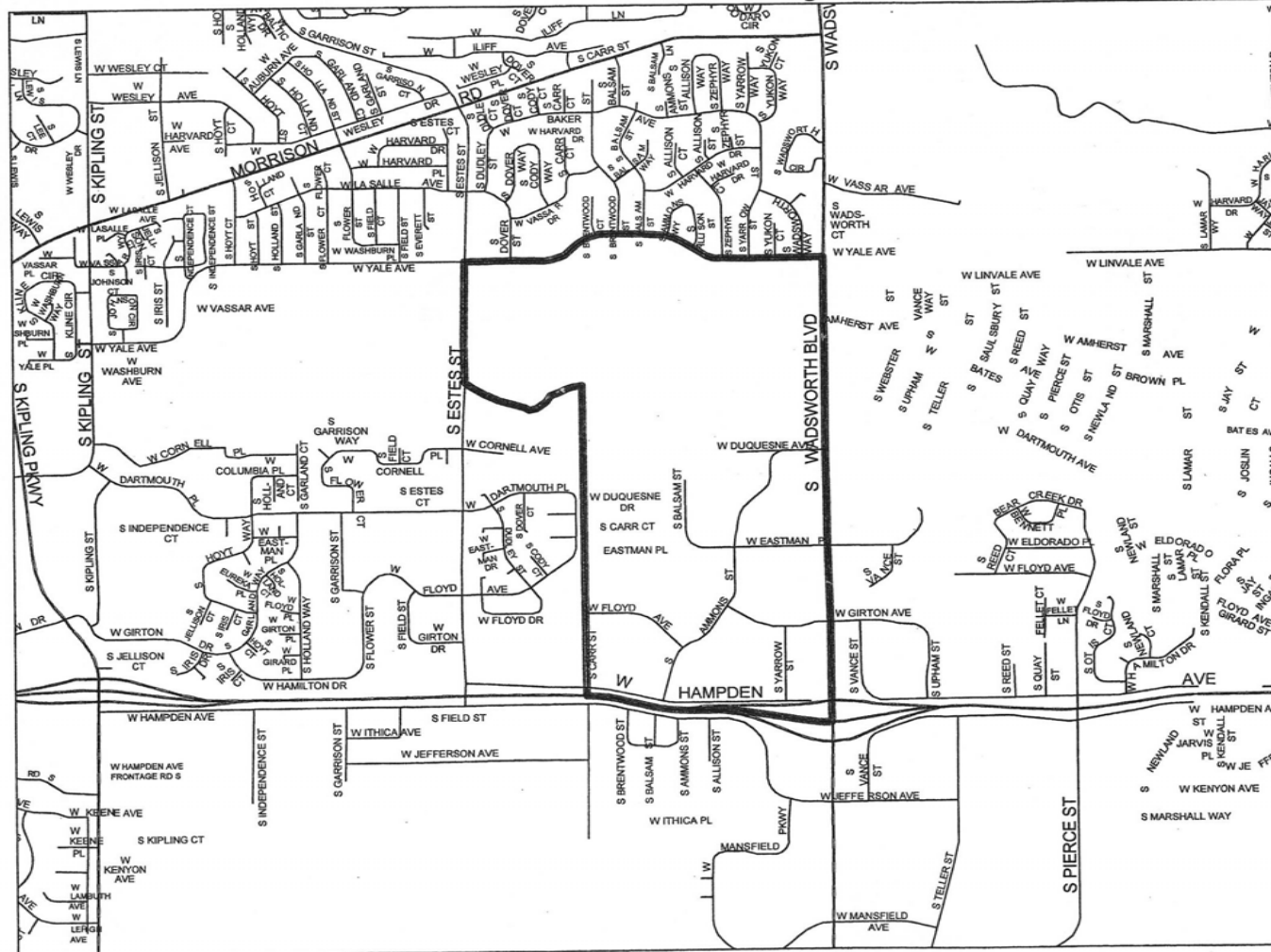
CRS 1-7-108(1)

I, _____, do solemnly swear that I am an eligible elector, that my name has been submitted to the designated election official as a watcher for this election, and that I will not in any manner make known to anyone the result of counting votes until the polls have closed.

Signature of Watcher

Signature of Election Judge/Designated Election Official Administering Oath

Jefferson County Precinct 7212230013



2005 Precinct 7212230013 Boundary Description:

EAST BOUNDARY: BEGINNING AT THE INTERSECTION OF W. YALE AVENUE AND S. WADSWORTH BLVD., SOUTH ON S. WADSWORTH BLVD. TO US HIGHWAY 285.

SOUTH BOUNDARY: WEST ON US HIGHWAY 285 TO S. CARR STREET.

WEST BOUNDARY: NORTH ON S. CARR STREET TO THE EAST FENCE LINE OF SILVER VALLEY AT BEAR CREEK TOWNHOMES, NORTH ON FENCE LINE TO BEAR CREEK, WEST ON BEAR CREEK TO S. ESTES STREET, NORTH ON S. ESTES STREET TO W. YALE AVENUE.

NORTH BOUNDARY: EAST ON W. YALE AVENUE TO THE POINT OF BEGINNING.



Text Street Names
Roads
Major
Minor
Precincts



Map produced: March 1, 2005



The Stone House is on the National Register for Historic Preservation. Please help us keep it a beautiful place to enjoy.

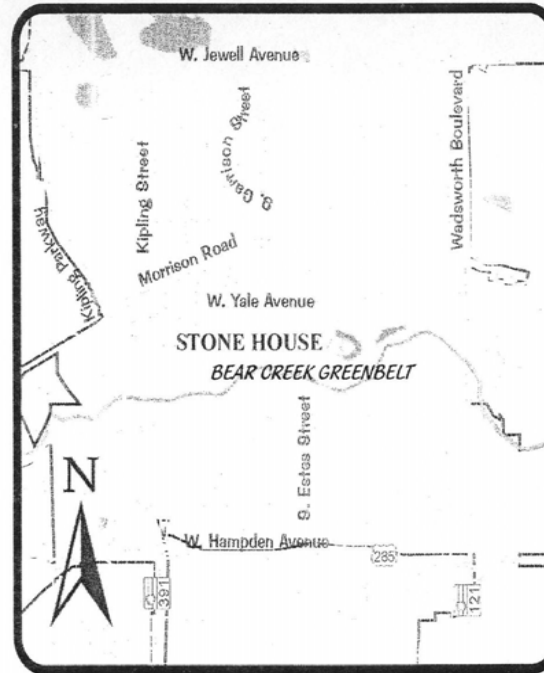
Host your special event at the Stone House

- Weddings
- Birthdays
- Graduations
- Retreats
- Receptions
- Reunions
- Family Gatherings
- Group Meetings

THE STONE HOUSE IS NOT
HANDICAP ACCESSIBLE

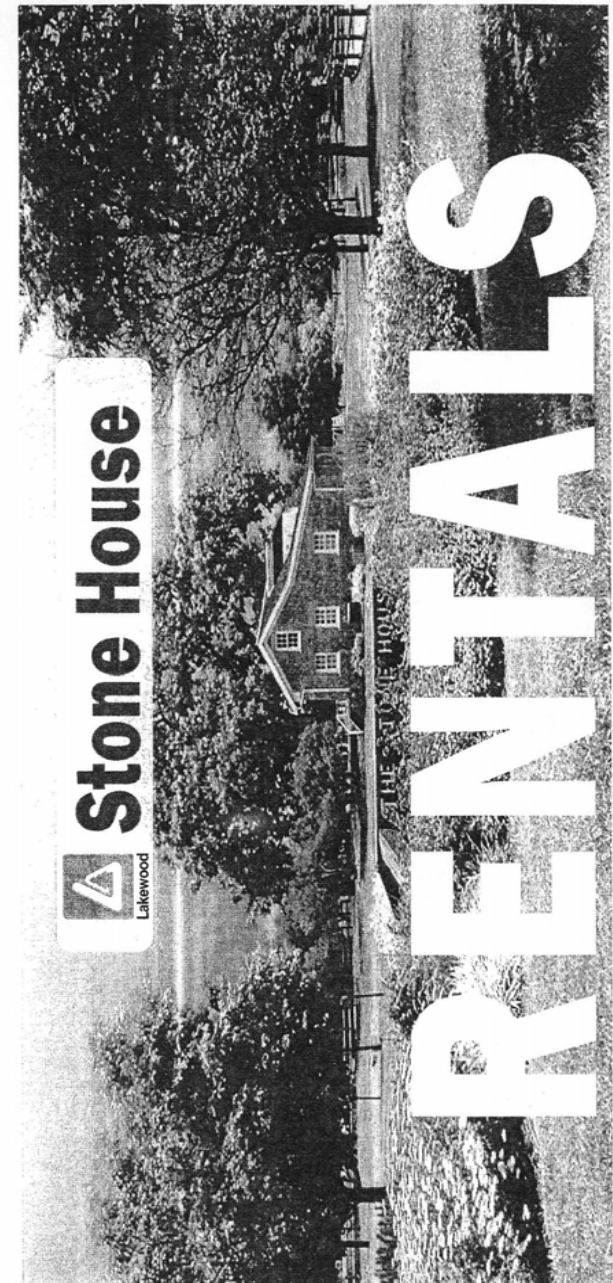
www.lakewood.org

9/04



The Stone House
2900 S. Estes St.
Lakewood, CO 80227

For Reservations call:
303-987-7800



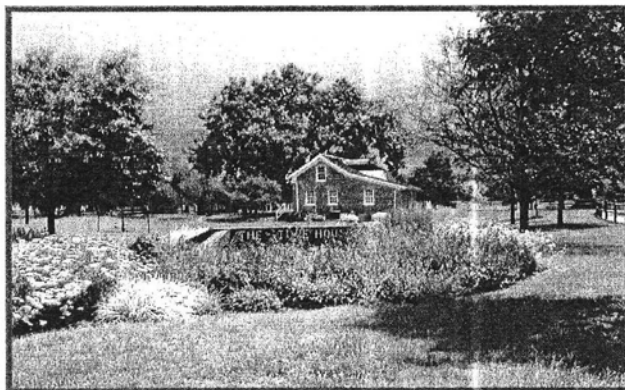
History

Lakewood's historical Stone House echoes with memories from the earliest days of the Colorado Gold Rush.

As the nation teetered on the brink of Civil War, two brothers from New York State joined the stream of people heading west. Joseph and William Hodgson settled in Bear Creek Valley, and Joseph built the Stone House sometime between 1859 and 1864. Legend notes it was a time when 18-inch walls were needed for protection.

In 1861, the Territorial Legislature ruled on water rights, and the Hodgson brothers began building an irrigation ditch. An 1864 letter to the Land Office of the Colorado Territory helped substantiate Joseph's claim to this farmland.

Soon, petitions were circulated for a road north from Bear Creek into the settlement called Denver. The resulting West Denver Road eventually became Sheridan Boulevard, and the early settlement along Bear Creek grew to become part of Lakewood.



Features

- 35 Stacking chairs
- Four (4) 6-foot folding tables
- Four (4) card tables
- Air conditioning/heating system
- Compact refrigerator
- Counter space and sink
- Outside power outlet
- Four (4) outside picnic tables

Hours of Use

Sun, Tue, Wed, Thu, Sat	8 am-10:30 pm
Mon, Fri	9 am-10:30 pm

Capacity

- House-35 maximum
- Fenced area-100 maximum (No Tents)
- Parking lot-50 spaces

There are no grills located in the Stone House yard. You can bring gas grills to use on the patio. Picnic tables from other areas in the park can be moved to the Stone House, provided they are returned to their original location at the end of your event.

THE PICNIC TABLES UNDER THE PARK SHELTER CANNOT BE MOVED.

Rental Fees

The rental fee is \$60 per hour with a two-hour minimum rental required. The damage deposit is doubled if an alcohol permit is obtained. You are allowed, without charge, 1/2 hour before your event for setup, and 1/2 hour after for cleanup. An alcohol permit for \$35 must be purchased for any beverage over 6% alcohol.

<u>Hours</u>	<u>Rental Fee</u>	<u>Deposit</u>
2	\$120	\$150
3	\$180	\$150
4	\$240	\$200
5	\$300	\$200
6	\$360	\$200
7	\$420	\$300
8+	\$480	\$300

CANCELLATION POLICY

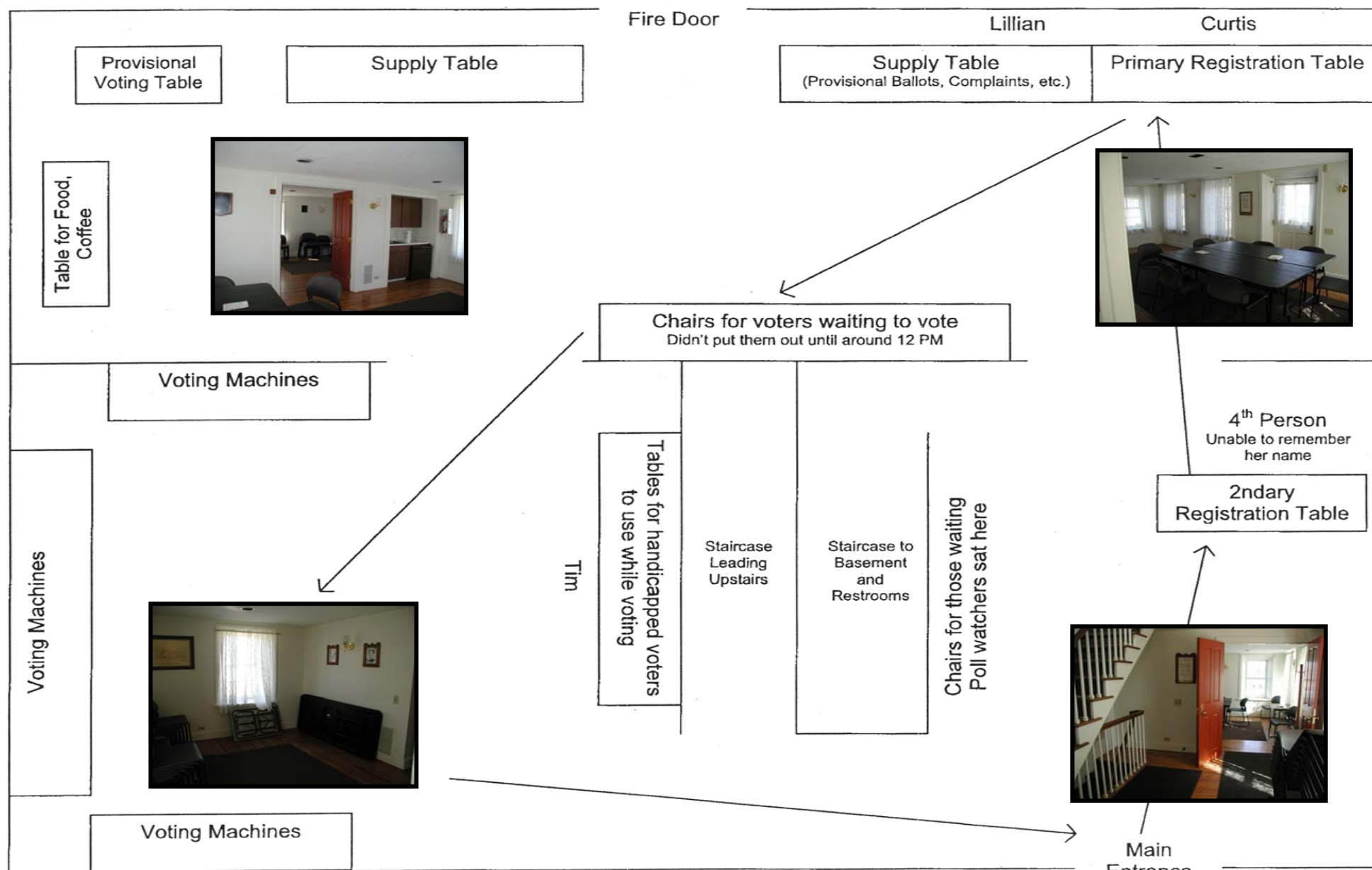
Cancellations received two or more weeks prior to an event will forfeit a service charge in the amount of \$20.

NO REFUNDS WILL BE MADE FOR CANCELLATIONS RECEIVED LESS THAN TWO WEEKS PRIOR TO A SCHEDULED EVENT.

www.lakewood.org

Exhibit 6 Maloney Sketch of Polling Place

STONE HOUSE NOVEMBER 2004 GENERAL ELECTION LAYOUT



from Tim Maloney

Exhibit 7 Pictures of Polling Place

Exhibit 7a



Exhibit 7 b



Exhibit 7 c



Exhibit 7 d



(Above and Below) Polling Place Accessible Entrance



(Above and Below) Polling Place Rear Entrance

